

**PALMER BIEZUP & HENDERSON LLP**

By: Michael B. McCauley (MM 7231)

140 Broadway, 46th Floor

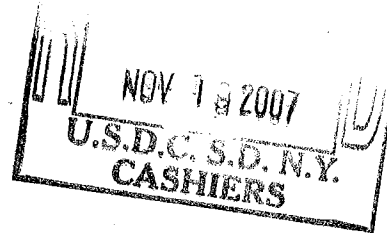
PMB 46030

New York, NY 10005

(212) 406-1855

Attorneys for Defendants Bean Dredging LLC,

Bean Excavation, LLC, C.F. Bean LLC



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ERIC GROVE,

Plaintiff,

vs.

BEAN DREDGING, LLC, *et al.*

Defendants/Third-Party Plaintiffs,

vs.

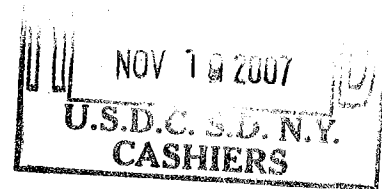
GMD SHIPYARD CORP., and  
BINDER MACHINERY COMPANY, LLC,

Third-Party Defendants.

Civ. No: 07 CV 8650

The Honorable John G. Koeltl

**THIRD-PARTY COMPLAINT**



Defendants and Third-Party Plaintiffs Bean Dredging, LLC, Bean Excavation, LLC, and C.F. Bean, LLC, (hereinafter "Third-Party Plaintiffs") by their undersigned attorneys, submit the following Third Party Complaint against GMD Shipyard Corp., and Binder Machinery Co., LLC (hereinafter "Third-Party Defendants") as follows:

1. This Honorable Court has subject matter jurisdiction over this Third-Party Complaint as Plaintiff brought this action pursuant to 28 U.S.C. §1332 and §1333. Alternatively, this Honorable Court has subject matter jurisdiction over this Third-Party Complaint pursuant to pendent, ancillary and supplemental jurisdiction (28 U.S.C. §1367).

2. Plaintiff, Eric Grove, filed a Complaint against Third-Party Plaintiffs in the United States District Court for the Southern District of New York on October 10, 2007, a true and correct copy of which is attached hereto as Exhibit "A".

3. Third-Party Plaintiffs filed their Answer to Complaint on November 5, 2007, a true and correct copy of the Answer is attached hereto and made part hereof as Exhibit "B".

4. Third Party Plaintiffs repeat and reiterate each and every response in their Answer to Complaint (Exhibit "B") as if same were set forth herein at length.

5. At all times material hereto Defendant Bean Excavation, LLC was and still is a business entity organized under the laws of the State of Louisiana, with an office and principal place of business at 1055 St. Charles Avenue, Suite 500, New Orleans, Louisiana 70130.

6. On or about July 21, 2006, Plaintiff was an employee of Defendant Bean Excavation, LLC.

7. At all times material hereto Third-Party Defendant, GMD Shipyard Corp. was a business entity with a registered office and corporate headquarters at 111 Livingston Street, Suite 1110, Brooklyn, New York.

8. At all times material hereto Third-Party Defendant, Binder Machinery Co., LLC was a business entity with a registered office and corporate headquarters at 2820 Hamilton Boulevard, South Plainfield, New Jersey.

9. On or about July 21, 2006, Third-Party Defendants provided maintenance and repair services to Bean Excavation, LLC aboard the dredge Tauracavor located at the GMD Shipyard in Brooklyn, New York.

10. On or about July 21, 2006, one or more agents, servants and/or employees of Third-Party Defendants designed, constructed, maintained, and controlled a work area and provided equipment in connection therewith consisting of, *inter alia*, a ladder and wooden platform, aboard the dredge Tauracavor.

11. The Complaint (Exhibit "A") alleges that Third-Party Plaintiffs are liable to Plaintiff for alleged personal injuries he claims he sustained on or about July 21, 2006 while working on the dredge Tauracavor at the Brooklyn Naval Yard, State of New York.

12. Third-Party Defendants, by their respective agents, servants and/or employees, were responsible for the work and the work area and equipment utilized during the repair on the dredge Tauracavor on or about July 21, 2006, and owed a duty to, among others, the vessel, its owners, employees and agents to perform such work in a safe, proper and workmanlike manner.

13. If the allegations contained in Plaintiff's Complaint are proven to be true, which is denied by Defendants/Third-Party Plaintiffs, then any alleged injuries, losses and damages claimed by Plaintiff were caused by the fault, neglect, and breaches of warranties by Third-Party Defendants, who are directly liable jointly and severally to Plaintiff, and who, in the alternative, are obligated to

indemnify Defendants/Third-party Plaintiffs for all sums which they may be required to pay, including attorneys' fees and the other costs of defending this action.

14. If the allegations contained in Plaintiff's Complaint are proven to be true, which are denied by Defendants/Third-Party Plaintiffs, then any alleged accident, injuries, losses and damages claimed by Plaintiff were caused by the primary, active and direct fault, negligence, breaches of contract, breaches of warranties, breaches of the warranty of workmanlike service, recklessness, willful and wanton conduct, and want of reasonable care under the circumstances on the part of Third-Party Defendants, and each of them.

15. In the event it is determined at trial that Plaintiff is entitled to recover, which is denied by Third-Party Plaintiffs, then Plaintiff is entitled to recover solely from Third-Party Defendants jointly and severally pursuant to Rule 14 of the Federal Rules of Civil Procedure, without any contribution whatsoever from Third-Party Plaintiffs.

16. In the event it is determined at trial that Plaintiff is entitled to recover any damages whatsoever against Defendants/Third-Party Plaintiffs by reason of the allegations set forth in the plaintiff's Complaint, said liability, entitlement to recovery, and allegations of Plaintiff, being specifically denied by Third-Party Plaintiffs, then Third-Party Plaintiffs are entitled to full indemnity and/or contribution from Third-Party Defendants, and each of them, including attorneys' fees and the other costs of defending Plaintiff's original action.

WHEREFORE, Third-Party Plaintiffs, Bean Dredging, LLC, Bean Excavation, LLC, and C.F. Bean, LLC, demand judgment in their favor and against Plaintiff, Eric Grove, dismissing his Complaint with prejudice along with an award of costs and attorneys' fees, or in the alternative, that

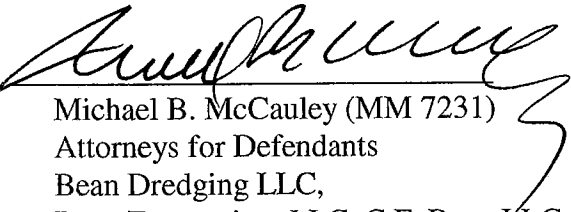
judgment be entered in favor of Third Party Plaintiffs and directly against Third-Party Defendants, GMD Shipyard Corp. and Binder Machinery Co., LLC, jointly, or alternatively that judgment be entered in favor of Defendants/Third-Party Plaintiffs and against Third-Party Defendants, for indemnity and/or contribution, with an award of costs and attorneys' fees, along with such other relief as this Honorable Court may deem appropriate.

Respectfully submitted,

PALMER BIEZUP & HENDERSON LLP

Dated: New York, New York  
November 16, 2007

By:

  
Michael B. McCauley (MM 7231)  
Attorneys for Defendants  
Bean Dredging LLC,  
Bean Excavation, LLC, C.F. Bean LLC  
140 Broadway, 46th Floor  
PMB 46030  
New York, NY 10005  
(212) 406-1855  
mmccauley@pbh.com

**CERTIFICATE OF SERVICE**

The undersigned counsel hereby certifies that service of a true and correct copy of Defendants' Third-Party Complaint was made to the below-listed counsel on November 16, 2007 via United States First-Class Mail, postage prepaid, as follows:

Michael H. Zhu, Esq.  
MICHAEL H. ZHU, ESQ. P.C.  
14 Wall Street, 22<sup>nd</sup> Floor  
New York, New York 10005

PALMER BIEZUP & HENDERSON LLP

Dated: New York, New York  
November 16, 2007

By: 

Michael B. McCauley (MM 7231)  
Attorneys for Defendants,  
Bean Dredging LLC,  
Bean Excavation, LLC, C.F. Bean LLC  
140 Broadway, 46th Floor  
PMB 46030  
New York, NY 10005  
(212) 406-1855  
mccauley@pbh.com



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7/1/07

JUDGE KOELLER

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

07 CIV 8650

-----X  
ERIC GROVE  
P.O. Box 46843  
Las Vegas, Nevada 89114

CIVIL ACTION  
Index No.

JURY TRIAL DEMANDED

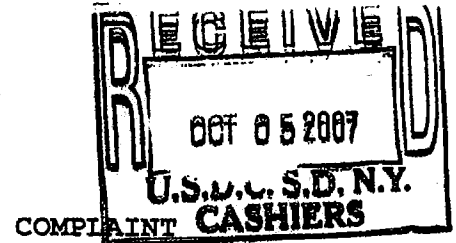
v.

BEAN DREDGING LLC  
1055 St. Charles Avenue., Suite 500  
New Orleans, Louisiana 70130

and

BEAN EXCAVATIONS LLC  
1055 St. Charles Avenue., Suite 500  
New Orleans, Louisiana 70130

C.F. BEAN, LLC  
1055 St. Charles Avenue., Suite 500  
New Orleans, Louisiana 70130



(WAIVER OF FILING FEE  
28 USC SECTION 1916)

-----X

Plaintiff hereby claims of the defendant a sum in excess of One Hundred and Fifty Thousand Dollars (\$150,000.00) in damages upon the following causes of action:

1. Plaintiff is a seaman.
2. This action is brought pursuant to the Maritime Law of the United States as modified by the Jones Act, 46 U.S.C. §§688, et seq.
3. At all times material hereto, one or more of the defendants were doing business at the Brooklyn Naval Yard, State of New York.
4. At all times material hereto, plaintiff was in the employ one or more of the defendants as a deck hand at the rate of pay and for the terms as set forth in his contract of employment.



5. On or about July 21, 2006, while at sea, plaintiff suffered injuries while under the employment of one or more of the defendants.

6. Plaintiff's injuries were caused by the negligence of one or more of the defendants, their agents, servants, workmen and employees, by the unseaworthiness of the vessel, and by one or more of the defendants' breach of their obligation under the circumstances.

7. Solely by reason of the negligence of one or more of the defendants, plaintiff sustained personal injuries.

**WHEREFORE**, plaintiff demands judgment against one or more of the defendants in excess of the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), with costs and interest, and brings this action to recover same.

SECOND CAUSE OF ACTION

In Admiralty

Plaintiff claims of one or more of the defendants maintenance and cure and wages in such amount as may be determined by the Court upon the following cause of action:

8. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 7, inclusive, of this Complaint with the same force and effect as if fully set forth and repeated herein.

9. Plaintiff, by virtue of his services upon the said vessel, claims maintenance and cure and wages for the period of this

disability in an amount which to your Honorable Court shall deem just and proper upon the trial of this cause.

10. All and singular, the premises contained herein are true and within the admiralty and maritime jurisdiction of the United States and this Honorable Court.

**WHEREFORE**, plaintiff prays that judgment be entered against one or more of the defendants for such maintenance and cure and wages as the Court may determine to be due and owing upon the trial of this cause, and for such interest, costs and counsel fees as the Court may deem just and proper.

Dated: New York, New York  
October 4, 2007

BY: 

Michael H. Zhu, Esquire  
Michael H. Zhu, Esquire P.C.  
14 Wall Street, 22<sup>nd</sup> Floor  
New York, New York 10005  
Attorney for Plaintiff

Of Counsel:  
Rudolph V. DeGeorge, II, Esquire  
BARISH◆ROSENTHAL  
Bell Atlantic Tower  
1717 Arch Street, Suite 4020  
Philadelphia, PA 19103  
(215) 923-8900

ATTORNEY'S VERIFICATION

The undersigned, an attorney admitted to practice in the United States District Court, Southern District of New York: That the undersigned is a member of the firm of Michael H. Zhu, Esq. P.C., attorneys for plaintiff Eric Grove, in the within action; that the undersigned has read the foregoing Verified Complaint and knows the contents thereof; that the same are true to affirmant's own knowledge, except as to the matters therein stated to be alleged on information and belief; and as to those matters affirmant believes them to be true.

The undersigned further states that the reason this affirmation is made by the undersigned and not by plaintiff is that the plaintiff resides outside the state where the undersigned maintains his offices.

The grounds of affirmant's belief as to all matters not stated to be upon affirmant's knowledge, are as follows: books, records, correspondence, investigation and other documentation in the possession of the undersigned.

The undersigned affirms that the foregoing statements are true, under the penalty of perjury.

Dated: New York, New York  
October 4, 2007

  
Michael H. Zhu



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11/19/07

**PALMER BIEZUP & HENDERSON LLP**

By: Michael B. McCauley (MM 7231)

140 Broadway, 46th Floor

PMB 46030

New York, NY 10005

(212) 406-1855

Attorneys for Defendants Bean Dredging LLC,

Bean Excavation, LLC, C.F. Bean LLC

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
ERIC GROVE,

Plaintiff,

vs.

BEAN DREDGING, LLC, et al.

Defendants.  
-----

:  
: Civ. No: 07 CV 8650  
:  
:

: The Honorable John G. Koeltl  
:  
:

: **ANSWER TO COMPLAINT**  
:  
:  
:

Defendants Bean Dredging, LLC, Bean Excavation, LLC, and C.F. Bean, LLC, by their undersigned attorneys, answer the Complaint filed herein by Plaintiff Eric Grove as follows:

**ANSWER TO FIRST COUNT**

1. The averments in Paragraph 1 of Plaintiff's Complaint are conclusions of law and therefore are denied.
2. The averments in Paragraph 2 of Plaintiff's Complaint are conclusions of law and therefore are denied.
3. Admitted as to Bean Excavation LLC; otherwise denied.

4. Admitted in part; denied in part. It is admitted only that Plaintiff was in the employ of defendant Bean Excavation LLC on July 21, 2006. The remaining averments in Paragraph 4 of Plaintiff's Complaint are denied.

5. Admitted in part; denied in part. It is admitted only that Plaintiff was in the employ of defendant Bean Excavation LLC on July 21, 2006. The remaining averments in Paragraph 5 of Plaintiff's Complaint are denied.

6. Denied.

7. Denied.

WHEREFORE, Defendants demand judgment in their favor and against Plaintiff dismissing Count I of his Complaint with prejudice.

#### **ANSWER TO SECOND COUNT**

8. Answering defendants repeat and re-allege each and every answer to paragraphs one through seven of Plaintiff's Complaint and incorporate the same herein as if fully set forth at length.

9. Denied.

10. The averments in Paragraph 10 of Plaintiff's Complaint are conclusions of law and therefore are denied.

WHEREFORE, Defendants Bean Dredging, LLC, Bean Excavation, LLC, and C.F. Bean, LLC demand judgment in their favor and against Plaintiff dismissing Count II of his Complaint with prejudice, and further demand judgment in their favor dismissing the Complaint in its

entirety and for attorneys' fees, and such other relief as the Honorable Court may deem appropriate.

**FIRST DEFENSE**

The Complaint fails to state a claim against answering defendants for which relief can be granted.

**SECOND DEFENSE**

The damages or injuries alleged in Plaintiff's Complaint, if they occurred, which is denied, were the result of acts, errors, omissions or negligence of other parties for which answering defendants are not responsible.

**THIRD DEFENSE**

The plaintiff's own negligence was the sole cause of his alleged injuries and accordingly, plaintiff's claims must be dismissed.

**FOURTH DEFENSE**

Plaintiff was contributorily negligent and any damages to which he is entitled must be reduced accordingly.

**FIFTH DEFENSE**

The damages or injuries, or some portion thereof, alleged in Plaintiff's Complaint, if they occurred, which is denied, were the result of the plaintiff's assumption of the risk, for which answering defendants are not responsible.

**SIXTH DEFENSE**

Plaintiff's alleged damages, if any, were solely caused by the failure of Plaintiff to mitigate his damages.

**SEVENTH DEFENSE**

Plaintiff's claims are barred or decreased by the doctrine of setoff.

**WHEREFORE**, Defendants Bean Dredging, LLC, Bean Excavation, LLC, and C.F. Bean, LLC demand judgment in their favor and against Plaintiff dismissing the Complaint in its entirety and for attorneys' fees, and such other relief as the Honorable Court may deem appropriate and just under the circumstances.

Respectfully submitted,

PALMER BIEZUP & HENDERSON LLP

Dated: New York, New York  
November 5, 2007

By: /s/ Michael B. McCauley  
Michael B. McCauley (MM 7231)  
Attorneys for Defendants Bean Dredging  
LLC, Bean Excavation, LLC, C.F. Bean LLC  
140 Broadway, 46th Floor  
PMB 46030  
New York, NY 10005  
(212) 406-1855  
mmccauley@pbh.com



AO 441 (Rev. 8/01) Third Party Summons in a Civil Action

# UNITED STATES DISTRICT COURT

Southern

District of

New York

PLAINTIFF

Eric Grove

## THIRD PARTY SUMMONS IN A CIVIL ACTION

V. DEFENDANT AND THIRD PARTY PLAINTIFF

Bean Dredging, LLC; Bean Excavation, LLC;  
C.F. Bean LLC

Case Number: 07-cv-8650 (JGK)

V. THIRD PARTY DEFENDANT

GMD Shipyard Corp.

To: Name and address of Third Party Defendant

GMD Shipyard Corp.  
111 Livingston Street, Ste 1110  
Brooklyn, NY 11201-5078

**YOU ARE HEREBY SUMMONED** and required to serve on

PLAINTIFF'S ATTORNEY (name and address)

Michael H. Zhu, Esq.  
MICHAEL H. ZHU, ESQ. P.C.  
14 Wall Street, 22nd Floor  
New York, NY 10005

DEFENDANT AND THIRD-PARTY PLAINTIFF'S ATTORNEY  
(name and address)

Michael B. McCauley, Esq.  
PALMER BIEZUP & HENDERSON LLP  
140 Broadway, 46th Floor  
PMB 46030  
New York, NY 10005

an answer to the third-party complaint which is served on you with this summons, within twenty (20) days after the service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default may be taken against you for the relief demanded in the third-party complaint. There is also served on you with this summons a copy of the complaint of the plaintiff. You have the option of answering or not answering the plaintiff's complaint, *unless* (1) this is a case within Rule 9(h) Federal Rules of Civil Procedure, *and* (2) the third-party plaintiff is demanding judgment against you in favor of the original plaintiff under the circumstances described in Rule 14(c) Federal Rules of Civil Procedure, in which situation you are required to make your defenses, if any, to the claim of plaintiff as well as to the claim of the third-party plaintiff. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

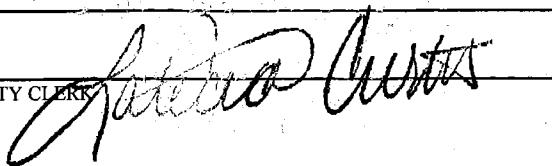
**J. MICHAEL McMAHON**

NOV 19 2007

CLERK

DATE

(By) DEPUTY CLERK



AO 441 (Rev. 8/01) Third Party Summons in a Civil Action

<b>RETURN OF SERVICE</b>		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the third-party defendant. Place where served: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the third-party defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  Name of person with whom the summons and complaint were left: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: </div> <div> <input type="checkbox"/> Other (specify): </div>		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL \$0.00
<b>DECLARATION OF SERVER</b>		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____  <div style="display: flex; justify-content: space-between; width: 80%; margin-left: 10%;"> <span>Date</span> <span>Signature of Server</span> </div>   <div style="margin-left: 30%;"> Address of Server </div> </p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.

AO 441 (Rev. 8/01) Third Party Summons in a Civil Action

# UNITED STATES DISTRICT COURT

Southern

District of

New York

PLAINTIFF

Eric Grove

## THIRD PARTY SUMMONS IN A CIVIL ACTION

V. DEFENDANT AND THIRD PARTY PLAINTIFF

Bean Dredging, LLC; Bean Excavation, LLC;  
C.F. Bean LLC

Case Number: 07-cv-8650 (JGK)

V. THIRD PARTY DEFENDANT

Binder Machinery Co., LLC

To: Name and address of Third Party Defendant

Binder Machinery Co., LLC  
2820 Hamilton Boulevard  
South Plainfield, NJ 07080

**YOU ARE HEREBY SUMMONED** and required to serve on

PLAINTIFF'S ATTORNEY (name and address)

Michael H. Zhu, Esq.  
MICHAEL H. ZHU, ESQ. P.C.  
14 Wall Street, 22nd Floor  
New York, NY 10005

DEFENDANT AND THIRD-PARTY PLAINTIFF'S ATTORNEY  
(name and address)

Michael B. McCauley, Esq.  
PALMER BIEZUP & HENDERSON LLP  
140 Broadway, 46th Floor  
PMB 46030  
New York, NY 10005

an answer to the third-party complaint which is served on you with this summons, within twenty (20) days after the service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default may be taken against you for the relief demanded in the third-party complaint. There is also served on you with this summons a copy of the complaint of the plaintiff. You have the option of answering or not answering the plaintiff's complaint, *unless* (1) this is a case within Rule 9(h) Federal Rules of Civil Procedure, *and* (2) the third-party plaintiff is demanding judgment against you in favor of the original plaintiff under the circumstances described in Rule 14(c) Federal Rules of Civil Procedure, in which situation you are required to make your defenses, if any, to the claim of plaintiff as well as to the claim of the third-party plaintiff. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

**J. MICHAEL McMAHON**

CLERK

(By) DEPUTY CLERK

NOV 19 2007

DATE

AO 441 (Rev. 8/01) Third Party Summons in a Civil Action

<b>RETURN OF SERVICE</b>		
Service of the Summons and complaint was made by me <sup>(1)</sup>	DATE	
NAME OF SERVER	TITLE	
<i>Check one box below to indicate appropriate method of service</i>		
<div style="margin-bottom: 10px;"> <input type="checkbox"/> Served personally upon the third-party defendant. Place where served: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Left copies thereof at the third-party defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.  Name of person with whom the summons and complaint were left: </div> <div style="margin-bottom: 10px;"> <input type="checkbox"/> Returned unexecuted: </div> <div> <input type="checkbox"/> Other (specify): </div>		
<b>STATEMENT OF SERVICE FEES</b>		
TRAVEL	SERVICES	TOTAL \$0.00
<b>DECLARATION OF SERVER</b>		
<p>I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.</p> <p>Executed on _____ Date _____ Signature of Server _____</p> <p style="text-align: center; margin-top: 20px;">_____ Address of Server</p>		

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.